

MISSOURI DEPARTMENT OF MENTAL HEALTH

Dorn Schuffman, Department Director



DEPARTMENT
OPERATING
REGULATION
NUMBER

DOR
8.030

CHAPTER Regulatory Compliance	SUBCHAPTER HIPAA Regulations	EFFECTIVE DATE June 1, 2003	NUMBER OF PAGES 6	PAGE NUMBER 1 of 6
SUBJECT Policy: Access to Consumer Protected Health Information by Consumer, Parent, Guardian or Personal Representative		AUTHORITY Section 630.050 RSMo		History See Below
PERSON RESPONSIBLE Responsible Parties as Identified by Facility. (A) Privacy Officer (Facility Level or Central Office, as appropriate) (B) Medical Director/Superintendent/Director			Sunset Date Julv 1. 2006	

PURPOSE: It is the policy of the Missouri Department of Mental Health to protect the privacy of individually identifiable health information in compliance with federal and state laws governing the use and disclosure of protected health information. The Missouri Department of Mental Health recognizes the rights of consumers to access health information pertaining to them in a designated record set as set forth in 45 CFR Section 164.524. The Missouri Department of Mental Health further recognizes that access to protected health information may be limited or restricted as defined in this policy, in the Notice of Privacy Practices and as allowed by law. In cases where the consumer has been civilly adjudicated incapacitated or is a minor, the parent (if a minor), or the legal guardian or personal representative may request access. An exception to this statement occurs when a minor signs in for substance abuse treatment without parental consent, and in that situation, parents shall not have access to the protected health information. There may be additional exceptions as allowed by law.

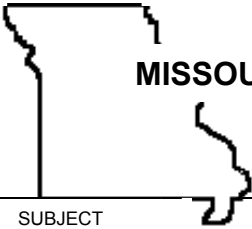
APPLICATION: The Department of Mental Health, its facilities and workforce.

(1) CONTENTS

- (A) Definitions
- (B) Request for Access to Protected Health Information
- (C) Denial of Access
- (D) Appeal and Review of Denial
- (E) Release of Protected Health Information of a Deceased Consumer
- (F) Provision of Access and Fees

(2) DEFINITIONS

- (A) Abstract (Summary): A brief summary on facility letterhead of the essential information as requested on a proper authorization
- (B) Consumer: any individual who has received or is receiving services from a Department of Mental Health state operated facility.
- (C) Designated record set: A group of any records under the control of a covered entity from which Protected Health Information is retrieved by the name of the individual or by identifying number.
- (D) Direct Access: An in-person review of the medical record, and/or obtaining a copy of the record.
- (E) Licensed Health Care Professional: As defined in Section 630.005, RSMo; 9 CSR 30-4.010; and 9 CSR 45-2.010(2)(U). Such professionals may be a licensed psychiatrist; a licensed psychologist; psychiatric nurse; master's degree social worker with specialized training in mental health services (one year of experience under



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supervision may be substituted for training; a licensed professional counselor); master's or doctorate in counseling, psychology, family therapy or related field with one year's experience related to mental illness; and a doctor of medicine, or registered nurse, or a bachelor's level social worker with one year's experience in working with consumers with developmental disabilities.

(F) Personal Representative: Person with a court order appointing them as guardian or with a valid Power of Attorney signed by the consumer specifying the authority to review and make decisions regarding medical, psychiatric, treatment or habilitation concerns.

(G) PHI: Protected Health Information: individually identifiable health information, defined as any information, including demographic information, collected from an individual that –

1. is created or received by a healthcare provider, health plan, employer, or healthcare clearinghouse; and

2. related to the past, present, or future physical or mental health or condition of an individual; the provision of healthcare to an individual; or the past, present, or future payment for the provision of healthcare to an individual, and

- a. identifies the individual, or

- b. with respect to which, there is reasonable basis to believe that the information can be used to identify the individual.

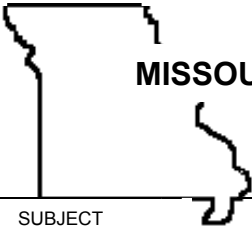
(H) Psychotherapy Notes: Notes recorded in any medium by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and that are **separated** from the rest of the individual's medical record. Such **notes exclude** medication prescriptions and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date.

(I) Official Signature: Legal Name, credential, and job title or position description.

(J) Disclosure of PHI Summary: An accounting of disclosures of PHI (in paper or electronic format) containing: date of disclosure; name and address of the organization or person who received the PHI; a brief description of the information disclosed; purpose for which the PHI was disclosed.

(3) REQUEST FOR ACCESS TO PROTECTED HEALTH INFORMATION

(A) A consumer who has or is receiving services from a Department of Mental Health facility, parent of a minor, and personal representative or legal guardian as relevant to their representation, must request in writing for access to inspect, or receive copies of, Protected Health Information except in those instances covered by Federal Regulation and outlined in the Notice of Privacy Practices acknowledged at admission, and must further specify the exact information requested for access.



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(B) The "Request for Consumer Access to Their Protected Health Information" form shall be provided to facilitate the request. Facility or DMH personnel may assist in initiating the process requesting access to Protected Health Information.

(C) All requests by consumers and their legal representatives for PHI must be forwarded to the Privacy Officer or designee for action.

(D) If it is acceptable after discussion with the consumer, the facility or DMH may provide a summary of the PHI to the consumer. If the summary is acceptable, the facility or DMH shall determine the appropriate staff to provide that explanation to the consumer. The consumer's agreement to a summary shall be documented in writing in the record as a check in the appropriate box in the "Request for Consumer Access to Their Protected Health Information" form. The consumer's agreement to any costs associated with the summary shall be documented in the record as a check in the appropriate box in the "Request for Consumer Access to Their Protected Health Information" form. The form shall be filed in the consumer's medical record.

(E) This request shall be processed in the format requested i.e. microfiche, computer disk, etc, if possible, and in a timely consistent manner according to established timeframes but not more than 30 days after receipt of the request.

1. If the record cannot be accessed within the 30 days, the timeframe may be extended once for no more than an additional 30 days with notification in writing to the individual outlining reasons for the delay and the date the request will be concluded.

(F) Requests for Access to Protected Health Information may be denied **without a right to review** as follows:

1. If the information conforms to one of the following categories: psychotherapy notes; information compiled for use in a civil, criminal or administrative action or proceeding; or information that would be prohibited from use or disclosure under the Certified Laboratory Information Act (CLIA) laws and regulations;

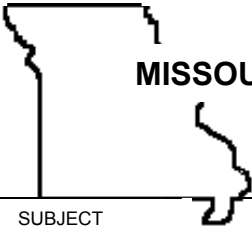
2. If the consumer is participating in research related treatment and has agreed to the denial of access to records for the duration of the study;

3. If access is otherwise precluded by law;

4. If the information was obtained from someone other than a health care provider under a promise of confidentiality and the access requested would be reasonably likely to reveal the source of the information. All Victim Notification and Duty To Warn forms, as well as any other documentation that contains demographics of victims or potential victims shall be removed before any review of the record by anyone not employed by the facility or DMH, and if the facility or DMH employee is a consumer worker, then the information shall be removed before any review of the record; or

5. If the facility has been provided a copy of a court order from a court of competent jurisdiction which limits the release or use of PHI.

(G) Requests for Access to Protected Health Information may be denied provided the individual is **given a right to have the denial reviewed** as follows:



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1. A licensed health care professional based on an assessment of the particular circumstances, determines that the access requested is reasonably likely to endanger the life or physical safety of the consumer or another person.

2. The facility may deny the consumer access to PHI if the information requested makes reference to someone other than the consumer and a licensed health care professional has determined that the access requested is reasonably likely to cause serious harm to that other person.

3. The facility may deny a request to receive a copy or inspect PHI by a personal representative of the consumer if the facility has a reasonable belief that the consumer has been or may be subjected to domestic violence, abuse, or neglect by such person; or treating such person as the personal representative could endanger the individual; and the facility, exercising professional judgment, decides that it is not in the best interest of the consumer to treat that person as the consumer's personal representative.

(4) DENIAL OF ACCESS

(A) Upon denial of any request for access to PHI, in whole or in part, a written letter shall be sent to the consumer, or other valid representative making the request for access, stating in plain language the basis for the denial.

(B) If the consumer has a right to a review of the denial as outlined in subsection (3)(G) above, the letter shall contain a statement of how to make an appeal of the denial including the name, title, address, and telephone number of the person to whom an appeal should be addressed.

(C) This letter shall also address the steps to file a complaint with the Secretary of HHS, Region VII, Office of Civil Rights.

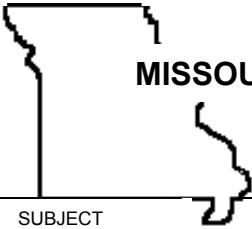
(D) If the information requested is not maintained by the facility or DMH, but it is known where the consumer may obtain access, the facility or DMH must inform the consumer where to direct the request for access. The consumer is to have access to records from another DMH operated facility that are maintained in the current facility's record.

(5) APPEAL AND REVIEW OF DENIAL OF REQUESTS AS DEFINED IN SUBSECTION (3)(G).

(A) A consumer, parent of a minor, or guardian of a consumer has the right to appeal the decision to withhold portions or all of the record for safety or confidentiality reasons.

(B) The appeal shall be submitted in writing to the Superintendent/Director of the facility, who will designate a licensed health care professional, or if the appeal is to Central Office concerning any information maintained by Central Office, then to the designated division licensed health care professional.

(C) The designated licensed health care professional who did not participate in the original decision to deny access shall review the record and the request for access to the consumer's record. (DMH form attached to this DOR)



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1. The reviewer must determine if access meets an exception as described in Section 3.

2. If the reviewer determines that the initial denial was appropriate, the consumer must be notified in writing, using plain language, that the review resulted in another denial of access. The notice must include the reasons for denial and must describe the process to make a complaint to the Secretary of HHS.

3. If the denial was not appropriate, the licensed health care professional who acts as the reviewer shall refer the request to the facility or Central Office Privacy Officer or designee for action.

4. If access is denied to any portion of the PHI, access must still be granted to those portions of the PHI that are not restricted.

5. The facility or Central Office is bound by the decision of the reviewer.

(6) PROVISION OF ACCESS AND FEES

(A) If DMH or a facility provides a consumer or legal representative with access, in whole or in part, to protected health information, the facility must comply with the specifications as outlined in federal regulations to the extent of the facility's capabilities and as identified in that facility's Notice of Privacy Practices.

1. Requested information must be provided in designated record sets.

2. If the requested information is maintained in more than one designated record set or in more than one location, the facility or DMH only needs to produce the information one time in response to the request.

3. The facility or DMH may provide a summary or explanation of the requested PHI if:

A. The consumer agrees in advance to the summary or explanation in place of the record.

B. The consumer agrees in advance to any fees imposed for the summary or explanation.

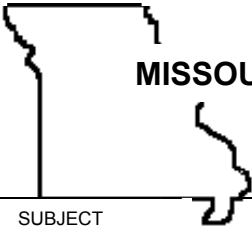
C. These agreements shall be documented as set forth in subsection (3)(D) above.

4. If the requested information is maintained electronically and the consumer requests an electronic or faxed copy, the facility or DMH must accommodate the request if possible and should explain the risk to security of the information when transmitted as requested.

5. If the information is downloaded to a computer disk, the consumer should be advised in advance of any charges for the disk and for mailing the disk. DMH shall establish a reasonable cost for the duplication of this information on a disk.

6. If the information is not available in the format requested, the facility or DMH must produce a hard copy document or other format agreed upon by the consumer and facility.

(B) The facility shall provide the access requested in a timely manner and arrange for a mutually convenient time and place for the consumer to inspect the PHI or obtain copies, unless access by another method has been requested by the



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consumer and agreed to by the DMH or facility as set forth in subsection (6)(A)4 above. Any requests for accommodations shall be sent or given in writing to the Privacy Officer or designee.

(C) Any fee charged will be in compliance with the current Missouri State Statute (See Section 191.227, RSMO), and federal law, and should be based upon the consumer's (if they are their own guardian) ability to pay. Guardians shall still be provided with copies of any and all planning documents related to their ward as dictated by current practice.

(7) RELEASE OF PROTECTED HEALTH INFORMATION OF A DECEASED CONSUMER.

(A) The PHI of a deceased consumer may only be released via a Probate Court order from the County Circuit Court where the deceased resided or from another Probate Court in the State of Missouri.

(B) Upon request to obtain information, the Privacy Officer or designee shall ask for a copy of the Probate Court Order.

(8) REVIEW PROCESS. The Central Office Privacy Officer will collect information from the facility Privacy Officers during the month of April each year beginning 2004 for the purpose of providing feedback to the Deputy Director, Office of Quality Management and to the Executive Team to determine the denial or granting of access, and to analyze the due process review component for any reviewable denials.

(9) SANCTIONS. Staff to comply or assure compliance with the DOR may result in disciplinary action, including dismissal.

(10) There shall be no facility policies pertaining to this topic. This Department Operating Regulation shall control.

HISTORY: Original DOR effective date January 1, 2003. Final DOR effective June 1, 2003.

**STATE OF MISSOURI****DEPARTMENT OF MENTAL HEALTH****REQUEST FOR CONSUMER ACCESS TO PROTECTED HEALTH INFORMATION**

Consumer Name and Date of Birth:

Statewide ID/Local Facility ID

Consumer Address: Street number, Street name, City, State, Zip Code; SSN

Please specify the information requested:

Please specify the format for information requested: Paper ☐ Computer disk ☐ CD ☐
Microfiche ☐ Fax ☐
(Note that not all formats may be available)

I agree to accept a summary of the Protected Health Information No ☐ Yes ☐

I agree to pay costs associated with this request for access to Protected Health Information
No ☐ Yes ☐

Please indicate the consumer, parent of a minor, or any legal guardian or personal representative who is requesting access

Individual's Name

Relationship to Consumer

Signature of Consumer or Legal Representative

Date

Date Received

Access has been:

granted ☐denied ☐**Comments:****IF denied, letter of denial provided to consumer on _____(date)****Reason(s) for denial without right of review:
(check all**

- ☐ Psychotherapy Notes that
apply)
☐ Patient agreed to denial of access while in
research project
☐ Information for use in civil, criminal or
administrative proceedings
☐ Information obtained from source other than
facility under promise of confidentiality and
access would identify the source.
☐ Other:

Reason for denial with right of review:

- ☐ Reasonably likely to endanger life or physical
safety of consumer/other person
☐ Documentation makes reference to third
party and granting access is likely to cause
serious harm
☐ Personal representative is requesting
Party, and consumer has been or may be
subject to domestic viol./abuse/neglect

Name and Title of Staff Member processing request

Signature of Health Care Provider

Date